

1 ANDRÉ BIROTE, JR.
2 United States Attorney
3 SANDRA R. BROWN
4 Assistant United States Attorney
5 Chief, Tax Division
6 DANIEL LAYTON (SBN 240763)
7 Assistant United States Attorney
8 Room 7211 Federal Building
9 300 North Los Angeles Street
10 Los Angeles, CA 90012
11 Telephone: (213) 894-6165
12 Facsimile: (213) 894-0115
13 Email: Daniel.Layton@usdoj.gov
14 Attorneys for the United States of America

15
16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA
18 SOUTHERN DIVISION

19 UNITED STATES OF AMERICA, } Case No. SACV 12-930 DOC (MLGx)
20 Plaintiff, } JOINT REPORT PURSUANT TO
21 vs. } FED. R. CIV. P. 26(f)
22 NAGESH SHETTY, et al., } [F.R.Civ.P. 26; Local Rule 26-1]
23 Defendants. } Scheduling Conference: Monday,
24 } November 26, 2012, at 8:30 a.m.

25
26 On October 26, 2012, the following parties held a conference to comply with
27 Fed. R. Civ. P. 26(f), Local Rule 26-1, and the Order Setting Scheduling
28 Conference dated September 18, 2012:

29 Plaintiff United States of America, through counsel, Assistant U.S. Attorney
30 Daniel Layton;
31 Defendant David M. Dudley, *pro se*;
32 Defendants Nagesh Shetty and Anita Shetty ("the taxpayers"), through
33 counsel, N. Kelly Hoang;
34 Defendant Richard D'Souza, aka Richard D'Sousa or Richard De Souza,
35 through counsel, Boyd Hudson;
36 Defendant State of California, through its agency the Franchise Tax Board,
37 through Deputy Attorney General Marla Markman;

1 Defendant Orange County Treasurer-Tax Collector, through Deputy County
2 Counsel Mark Batarse;

3 Defendant CitiMortgage, Inc., through counsel, Jennifer J. Maas; and
4 Defendant U.S. Bank, N.A. as Trustee for the registered holders of
5 Structured Asset Securities Corporation Mortgage Pass-Through
6 Certificates, Series 2007-TC1, through counsel Sara Firoozeh.

7 **(1) Short Factual Summary of the Case and of Claims and Defenses**

8 On June 11, 2012, plaintiff filed its COMPLAINT (1) TO REDUCE JOINT
9 FEDERAL TAX ASSESSMENTS TO JUDGMENT; (2) FOR A
10 DETERMINATION THAT REAL PROPERTY IS TITLED TO RICHARD
11 D'SOUZA AS NOMINEE OR IN RESULTING TRUST FOR THE BENEFIT OF
12 NAGESH SHETTY AND ANITA SHETTY; (3) TO SET ASIDE FRAUDULENT
13 TRANSFER OF REAL PROPERTY FROM NAGESH SHETTY AND ANITA
14 SHETTY TO RICHARD D'SOUZA; and (4) TO FORECLOSE FEDERAL TAX
15 LIENS ON REAL PROPERTIES (hereinafter "**Complaint**"). With respect to the
16 first cause of action, the United States is seeking to reduce to judgment assessed
17 liabilities from audits of Nagesh and Anita Shetty's 1987 to 1989 tax years, which
18 resulted in the IRS's determination that the taxpayers had income tax deficiencies
19 and were liable for fraud penalties. In addition, the first cause of action seeks to
20 reduce to judgment unpaid self-assessed liabilities for the taxpayers' 2006, 2007,
21 2009, and 2010 tax years.

22 In the fourth cause of action, the United States seeks an order foreclosing its
23 tax liens upon two real properties ("**the Subject Properties**"). The first real
24 property against which the United States seeks to foreclose its tax liens (hereinafter
25 "**the Huntington Beach Property**") is titled to A. Nagesh Shetty and Anita E.
26 Shetty as trustees of the Shetty Family Trust, dated February 27, 1991, and is
27 located in Huntington Beach, California. The second real property against which
28 the United States seeks to foreclose its tax liens (hereinafter "**the Irvine**

1 **Property")** is located at 31 Capobella, Irvine, California, and is titled to Richard
2 D'Souza. In the second and third causes of action, the United States seeks a
3 finding that Richard D'Souza holds title as a mere nominee for the benefit of the
4 taxpayers or an order setting aside the conveyance to Richard D'Souza as a
5 fraudulent transfer under Cal Civ. Code §§ 3439.04(a)(1), 3439.04(a)(2), and
6 3439.05.

7 The remaining defendants (other than the taxpayers and Richard D'Souza)
8 (hereinafter, "**lienholder defendants**") were named as parties due to their interests
9 recorded against the Subject Properties. The United States and the lienholder
10 defendants are working on the final touches to stipulations resolving any disputes
11 as to validity and relative priority of their interests with respect to each of the
12 Subject Properties. These parties expect to file a stipulation and proposed order
13 with the Court prior to the scheduling hearing which would limit the need for
14 active participation through the remainder of the litigation.

15 Defendant Richard D'Souza and the United States are currently working on
16 a stipulation with respect to the "nominee" issue which would limit his active
17 participation going forward in the litigation.

18 Defendants Nagesh Shetty and Anita Shetty have only recently accepted
19 service by Notice and Acknowledgement and their counsel is in the process of
20 reviewing and analyzing the claims in this case.

22 **(2) Short Synopsis of the Principal Issues in the Case**

23 First cause of action: (1) Whether the United States is entitled to reduce its
24 assessments for the taxpayers' 1987 to 1989, 2006, 2007, 2009, and 2010 tax years
25 to judgment; (2) whether the action has been brought within the statute of
26 limitations for the 1987 to 1989 tax years; (3) whether the assessments for the 1987
27 to 1989 tax years are erroneous in amount; and (4) whether the assessments for the
28 taxpayers' 1987 to 1989, 2006, 2007, 2009, and 2010 tax years were made within

1 the statute of limitations against assessment.

2 Second cause of action: Whether the Irvine Property is held by Richard
3 D'Souza as nominee or in resulting trust for the taxpayers as the true equitable or
4 beneficial owners.

5 Third cause of action: (1) Whether the conveyance of the Irvine Property
6 from the taxpayers to defendant Richard D'Souza may be set aside as a fraudulent
7 transfer pursuant to Cal. Civ. Code § 3439.04(a)(1); (2) Whether the conveyance of
8 the Irvine Property from the taxpayers to defendant Richard D'Souza may be set
9 aside as a fraudulent transfer pursuant to Cal. Civ. Code § 3439.04(a)(2); Whether
10 the conveyance of the Irvine Property from the taxpayers to defendant Richard
11 D'Souza may be set aside as a fraudulent transfer pursuant to Cal. Civ. Code §
12 3439.05.

13 Fourth cause of action: (1) Whether the United States has valid and
14 subsisting liens upon which the Court may enter an order of foreclosure on the
15 Subject Properties; (2) The determination of the interests and relative priority of
16 the lienholder defendants who have appeared in this action (as stated above, this
17 issue is expected to be resolved by stipulation).

18 **(3) Parties Likely to Be Added and Amendment to Pleadings**

19 The parties do not anticipate any likely additional parties to be added (L.R.
20 26-1(e)) or amendments to the pleadings.

21 **(4) Issues Which May Be Determined by Motion [L.R. 26-1(b)]**

22 The United States of America believes all issues may be resolved by
23 summary adjudication and expects to file a motion for summary judgment or for
24 partial adjudication of the issues. The United States conferred with the parties
25 present at the meeting regarding the substance of the contemplated motion and any
26 potential resolution. See L.R. 7-3.

27 The United States also may request a bifurcated trial in the event that a jury

1 is demanded on the first cause of action because the remaining causes of action are
2 dependent on the first and because the remaining causes of action are akin to
3 equitable relief and not entitled to a jury determination.

4 The United States will also move for default judgment against defendants
5 who have failed to answer or otherwise appear in this action.

6 **(5) Settlement Discussions and Settlement Procedure**

7 Discussions: The United States and the lienholder defendants are drafting
8 stipulations to resolve any issues regarding the validity and priority of their
9 interests. They expect to file stipulations and proposed orders, which would
10 relieve the lienholder defendants of active participation in the litigation, prior to the
11 scheduling hearing in this case.

12 The United States and defendant Richard D'Souza are currently discussing a
13 draft stipulation regarding his nominee status, the right of the United States to
14 foreclose on the Irvine Property, and a request that he be relieved of active
15 participation in this case.

16 Settlement Procedure: The parties are requesting that the settlement
17 conference be conducted by a Magistrate Judge. The parties will set a date for the
18 settlement conference to take place no later than 60 days prior to the trial date. A
19 Settlement Procedure Selection: Request and Notice is being filed herewith.

20 **(6) Discovery Plan**

22 The parties agree that this is not a complex case requiring reference to the
23 manual on complex litigation. L.R. 26-1(a).

24 *(a) Timing and Form of Required Disclosures.*

25 The parties agree to make the initial disclosures required under F.R.C.P.
26 26(a)(1) no later than January 22, 2013, and the pre-trial disclosures required by
27 F.R.C.P. 26(a)(3) no later than 30 days prior to the trial date.

1 The parties do not anticipate calling expert witnesses. If expert witnesses
2 become necessary, disclosures under F.R.C.P. 26(a)(2) shall be made not later than
3 60 days prior to the close of discovery. L.R. 26-1(f).

4 *(b) Subjects of Discovery, Phases, Limits or Focuses [F.R.C.P.*
5 *26(f)(3)(B)].*

6 The parties do not anticipate the need to have discovery conducted in phases,
7 in any set order, or be limited to or focused upon particular issues.

8 *(c) Electronically Stored Information [F.R.C.P. 26(f)(3)(C)].*

9 The parties do not anticipate any issues relating to disclosure or discovery of
10 electronically stored information, including the form or forms in which it should be
11 produced.

12 *(d) Issues About Claims of Privilege or Protection of Trial*
13 *Preparation Materials [F.R.C.P. 26(f)(3)(D)].*

14 The parties do not anticipate any issues relating to claims of privilege or of
15 protection as to trial-preparation material.

16 *(e) Changes in the Limitations on Discovery Provided by Federal*
17 *Rules or Local Rules [F.R.C.P. 26(f)(3)(E)].*

18 The parties do not anticipate the need for changes to be made in the
19 limitations on discovery imposed by the Federal Rules of Civil Procedure or the
20 Local Rules.

21 *(f) Orders the Court Should Issue Under Rule 26(c) or 16(b) & (c)*
22 *[F.R.C.P. 26(f)(3)(F)].*

23 The parties do not anticipate the need for any other orders that should be
24 entered by the Court under F.R.C.P. 26(c) or 16(b) and (c).

25 **(7) Trial by Jury or to the Court, Length of Trial**

26 Only the taxpayers are entitled to demand a jury because the first cause of
27 action is for a money judgment. As of the date of this report, the taxpayers have
28 not yet filed an answer and, thus, have not yet demanded a jury.

1 In the event a jury demand is made, trial will be by jury as to the first cause
2 of action. A request for bifurcation may be made with respect to trial by the Court
3 for the second, third, and fourth causes of action.

4 The estimated length of trial is three (3) days.

5 **(8) Any Other Issues Affecting Status or Management of the Case**

6 The parties do not anticipate any other issues which may affect the status or
7 management of the case.

8 **(9) Four Proposed Dates**

9 (a) Discovery cutoff date: November 25, 2013

10 The parties understand that the discovery cutoff date is the date by which all
11 discovery and depositions must be completed (not the date by which discovery
12 requests must be served). Furthermore, any motion challenging the adequacy of
13 discovery responses must be filed timely, served, and calendared sufficiently in
14 advance of the discovery cutoff date to permit the responses to be obtained before
15 that date.

16 (b) Final motion cutoff date: Monday, February 10, 2014

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1 (c) Date for pretrial conference: Monday, March 31, 2014

2 (d) Date for trial: Tuesday, April 21, 2014

3 Respectfully submitted,

4 NICHOLAS S. CHRISOS,
5 County Counsel

6 
7 MARK BATARSE
8 Deputy County Counsel
9 Attorneys for Orange County
Treasurer-Tax Collector

10 Date: 11/8/12

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12 JENNIFER J. MAAS
13 Wolfe & Wyman LLP
14 Attorneys for CitiMortgage, Inc.

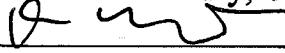
15 Date: _____

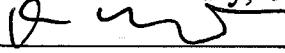
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18 Date: _____

20 BOYD D. HUDSON
21 Attorney for Richard D'Souza, a.k.a.
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25 SARA FIROOZEH
26 Houser & Allison, APC
27 Attorneys for U.S. Bank, N.A.
28 Date: _____

ANDRE BIROTTÉ, JR.,
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SANDRA R. BROWN,
Asst. U.S. Attorney, Chief, Tax Div.



DANIEL LAYTON, Asst. U.S. Attorney
Attorneys for the United States
of America

Date: 11/9/2012

KAMALA D. HARRIS
Attorney General of California
W. DEAN FREEMAN
Supervising Deputy Attorney General

MARLA K. MARKMAN
Deputy Attorney General
Attorneys for State of California,
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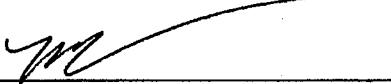
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31 *Richard D'Sousa or Richard De Souza*
32 Date: _____

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35 *Attorney for Nagesh Shetty and*
36 *Anita Shetty*
37 Date: 11-08-2012

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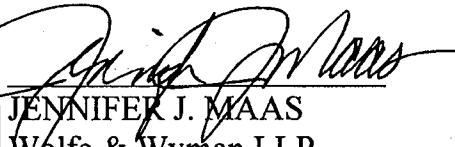
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28 N. KELLY HOANG
Attorney for Nagesh Shetty and
Anita Shetty
Date: _____

SARA FIROOZEH
Houser & Allison, APC
Attorneys for U.S. Bank, N.A.
Date: _____

PROOF OF SERVICE BY MAILING

I am over the age of 18 and not a party to the within action. I am employed by the Office of the United States Attorney, Central District of California. My business address is 300 North Los Angeles Street, Suite 7211, Los Angeles, California 90012.

On November 9, 2012, I served

Joint Report Pursuant to Fed.R.Civ.P. 26(f)

10 on the person and entity name below by enclosing a copy in an envelope addressed
11 as shown below and placing the envelope for collection and mailing on the date
12 and at the place shown below following our ordinary office practices. I am readily
13 familiar with the practice of this office for collection and processing
14 correspondence for mailing. On the same day that correspondence is placed for
15 collection and mailing, it is deposited in the ordinary course of business with the
16 United States Postal Service in a sealed envelope with postage fully prepaid.

SEE ATTACHED.

Date of mailing: **November 9, 2012.**

Place of mailing: Los Angeles, California

I declare under penalty of perjury under the laws of the United States of America that the foregoing if true and correct.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on: November 9, 2012, Los Angeles, California.

MARIA LUISA Q. BULLARD

USA V. NAGESH SHETTY, ET AL
SA CV 12-930 DOC(MLGx)

SERVICE LIST

N. Kelly Hoang
600 Anton Blvd., 11th Floor
Costa Mesa, CA 92626

Sara Firoozeh
Attorney
HOUSER
& ALLISON, APC
9970 Research Drive
Irvine, CA 92618

Mark A. Batarse, Deputy County Counsel
Orange County Counsel's Office
333 West Santa Ana Blvd., 4th Floor
Santa Ana, CA 92701

Jennifer J. Maas, Attorney at Law
WOLFE & WYMAN LLP
2301 Dupont Drive, Suite 300 • Irvine, CA 92612

Marla K. Markman
Deputy Attorney General
Office of the Attorney General
300 South Spring Street, Suite 1702
Los Angeles, California 90013

Law Offices of David M. Dudley
3415 South Sepulveda Blvd., Suite 320
Los Angeles, California 90034

Boyd Hudson
Adams Hawekotte & Hudson
251 S Lake Ave Ste 930
Pasadena, CA 91101